applied for and obtained the grant in good faith, and in good faith went for his family, and died in his efforts to bring them to Texas, in pursuance of the grant, they will find for the defendants;" which charge the Court refused to give. In view of the evidence and the law on which we have commented, we believe the Court erred in refusing to give the charge prayed for.

The Court erred also in overruling the motion for a new trial, on the ground that the verdict was contrary to the evidence.

There is nothing in the grounds stated by the counsel for the appellee, in his motion to dismiss the writ of error in this case. We have no doubt but the attorney appointed by the Court to represent the heirs, had a right to bring the case up for revision.

For the above errors the judgment must be reversed, and the cause remanded for a new trial, in accordance with the opinion given by us.[1]

RECENT ENGLISH DECISION.

Vice-Chancellor Wood's Court.

SCOTT *vs.* BENTLEY.

1. Where a creditor had been found lunatic in Scotland, and a curator bonorum appointed there—Held, that such curator bonorum has alone a right to sue and give discharges for personal estate of the lunatic, in England.

2. The debtor, not disputing his liability, nor the amount due, but only the right to give a discharge, paid the amount into a bank:—Held, that this was equivalent to a declaration of trust, and that the curator bonorum was right in proceeding in equity.

The question in this case was as to the right of a curator bonorum of a lunatic in Scotland to receive personal estate in England, consisting of arrears of an annuity of 1300*l.*, secured on lands in England, with a covenant to pay the annuity, and a power to the

[1] We are indebted to one of the learned counsel concerned in this case, and are assured that the judgment is of much interest and importance in Texas.—[*Eds. A. L. Reg.*]

grantee to distrain, and further secured by a bond in a penal sum of 1300*l.* The defendant, the personal representative and sole trustee of the will of the grantor, had paid the money into a bank, but insisted on having the most effectual guarantee, viz. that of the Court. The curator thereupon filed this bill to have the arrears handed over to him, and to have the future payments made to him so long as he should continue curator bonorum; and the annuity was dated in 1837, and was duly paid up to April, 1851. The plaintiff was fully appointed curator bonorum, and the opinion of Scotch lawyers was in evidence that nothing could be done there to complete the plaintiff's title, and that in Scotland he would be entitled to receive the money. The annuity constituted the whole of the property of the lunatic, and the sum lying in the bank was only gaining 2*l.* per cent. interest.

Rolt and *W. D. Evans*, for the plaintiff.

In a somewhat similar case before Lord Cottenham, when he was asked to order payment of a fund to the curator, he suggested whether payment of the dividends would not be sufficient, which was ordered accordingly. The person appointed, in the country where the lunatic is domiciled, to the care of his estate, must, from the necessity of the case, be able to give a receipt for every part of it connected with personal estate. The argument might be carried also to real estate, but the facts do not require that. As far as the law of Scotland, in a converse case, is of any authority, it is clear in favor of the plaintiff's claim. (*Gordon* vs. *Lord Stair*, 13 Shaw & Dunl.) [Sir *W. P. Wood*, V. C.—You may put it in this way —that when a curator is appointed, the law executes a power of attorney by the lunatic to him.] *Newton* vs. *Manning*, (1 Mac. & G. 362); *In re Morgan*, (there cited); and *In re Elias*, (3 Mac. & G. 234), are, so far as they go, authorities in favor of the plaintiff's right. The last case is, as reported, only intituled in lunacy; but the petition must also have been presented in the matter of the Act 3 & 4 Will. 4.

Daniel and *G. L. Russell*, for the defendant.

Rolt, in reply.

Feb. 20.—Sir W. P. Wood, V. C.—The question is, whether the curator bonorum is entitled to sue for personal estate of the lunatic in England. It is singular that there should be in such a case so small an amount of authority. There is, however, one—a case in the House of Lords. And dicta have been not unfrequent which favor the same construction. The case I allude to, *In re Morison*, is nowhere distinctly reported. The committee appointed under proceedings in England in lunacy of the estate of a Mr. Morison, resident in England, sued for personal estate in Scotland. The Court of Session decided against the right of the committee; but it appears that the House of Lords reversed the decision. Lord Hardwicke, in *Thorne* vs. *Watkins*, (2 Ves. sen. 35, 37), commenting upon the doctrine that personalty has no locality, that all debts follow the person of the creditor and not of the debtor, says, "Therefore debts due to a freeman of London anywhere are distributable according to the custom; and of that opinion I was in *Pipon* vs. *Pipon*, (Amb. 25). This also came in question in the House of Lords lately, on the lunacy of Mr. Morison; the question was, whether the rule would be the same in the courts of Scotland; and the opinion was, that it would be the same; and that it would be the same in a question between a court of France and a court of England." Mr. Morison's case is more fully stated, arguendo, by Hill, Serjt., in *Sill* vs. *Worswick*, (1 H. Bl. 665, 677, 682), which was a case in bankruptcy; there the doctrine is maintained just in the same way. The marginal note is, that assignees in an English bankruptcy may recover from one of the creditors a debt which such creditor had attached and obtained possession of in the Island of St. Christopher. Therefore, putting *Thorne* vs. *Watkins* altogether on one side, there would be authority to that extent, that a committee appointed in England is entitled to sue in Scotland for debts and assets there; which would go far to show that a curator bonorum appointed in Scotland should have an equal right to sue for and collect debts and assets in England. In *Selkrig* vs. *Davies* (2 Rose, 98) the judgment of Lord Eldon goes the whole extent of saying, that whatever might be the case as to realty, the English commission clearly passed the personal property in Scotland, and

all other parts of the world. That, again, was in a case of bankruptcy. In *Newton* vs. *Manning*, (1 Mac. & G. 364), Lord Cottenham seems to be of the same opinion; the petitioner there being appointed in France guardian of a defendant who had become lunatic, his Lordship appears to have said, that if the law of France warranted the proposed dealing with the lunatic's property, the money would be paid. The only analogy opposed to the curator's right in the present case is that from the case of executors; a Scottish personal representative could not, as such, sue here; and it was said that guardians of infants could not. *Beattie* vs. *Johnstone* (1 Ph. 17,) was cited for the latter position; but in that case Lord Lyndhurst does not say that they have no rights, but he only expresses some doubts as to what their rights are. The case of administration is quite distinct, because that depends upon the authority of the Ecclesiastical Court, and therefore has no analogy with the present case. The analogy is much more near with the case of assignees in bankruptcy, who when appointed here, the act of Parliament vesting all the estate of the bankrupt in them, they are allowed to sue in Scotch courts. I think, therefore, that the curator is entitled to recover this money; and the only question is, whether he is entitled to recover in this suit. As to the form of suit being by the curator alone, it is allowed that he can sue alone in Scotland; and, as in *Morison's case*, it appears that a committee appointed here can sue there just as if appointed there. And as to the proper course being at law, it appears that the money here being deposited at the banker's, amounts to an admission or declaration of trust in favor of somebody—only the person who has the right to give a discharge is in question. The curator, therefore, is right in coming here, and it must be paid to him on his sole receipt. As to costs, it is a new point, without any distinct authority; therefore let the defendant have costs out of the fund, and trustee's costs, for it is a suit to administer the fund.